IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5239 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? ***1 to 5 NO***

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RITABEN D/O KANTILAL SHAH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BS PATEL for Applicant(s) : 1,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 25/04/2007

ORAL JUDGMENT :

1. Even as the present petition invoking the provisions of section 482 of the Code of Criminal Procedure, 1973 for quashing the complaint in Criminal Case No.3106 of 1998 and the order made

therein was admitted in the year 1999 and interim relief staying further proceedings of the criminal case was granted, the petitioner was expressly permitted by order dated 27.6.2000 to approach the trial court for appropriate relief and the trial court was directed to consider the application of the petitioner irrespective of the stay. Thereafter on 31.8.2000, it was stated before the court that some amount was to be paid by the petitioner to the contesting respondents. Now, about seven years thereafter, learned counsel for the petitioner, Mr.Kamal Sojitra, appearing with learned counsel Mr.B.S.Patel, declared complete ignorance about the kind of application filed in the trial court and further submitted that the file of the original criminal case could not be traced in the trial court. It, therefore, *prima facie*, appears that the petitioner has neither sincerely pursued the present proceedings nor the application supposed or proposed to have been made in the trial court.

2. Apart from the above facts, no ground is made out to quash the criminal complaint even as the documents annexed with the original complaint are not placed on record and hence the nature of transaction between the complainant and the petitioner is not clear.

3. Therefore, the petition is dismissed, Rule is discharged and interim relief is vacated with liberty to the petitioner to make appropriate application in the trial court at the appropriate stage and avail the defences that may be available to her.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)